



Comptroller General
of the United States

Washington, D.C. 20543

Decision

Matter of: Contact International Corporation

File: B-246937

Date: December 20, 1991

David A. Sharp for the protester.
Herbert F. Kelley, Jr., Esq., and Captain Gerald P. Kohns,
Department of the Army, for the agency.
Guy R. Pietrovito, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. In a negotiated procurement for a fixed-price, combined indefinite quantity and requirements, contract, a procuring agency is not required to conduct a cost realism analysis simply because the solicitation required cost and pricing data, where adequate price competition was obtained and the solicitation does not provide for a cost realism analysis.
2. The submission of a below-cost offer in a fixed-price procurement is not in itself objectionable.
3. Post-award protest allegation that solicitation failed to provide sufficient information to allow offerors to compete on an equal basis is an untimely protest of an apparent solicitation impropriety, since it was not protested prior to the closing date for receipt of proposals.

DECISION

Contact International Corporation protests the award of a contract to Dairy Maid Dairy, Inc. (DMD) under request for proposals (RFP) No. DAJB03-91-R-3216, issued by the Department of the Army for dairy operation and maintenance services of a government-owned plant at Songnam, Republic of Korea. Contact protests that the RFP did not state sufficient information to allow offerors to compete on an equal basis and that the Army did not perform a cost realism analysis of DMD's allegedly below-cost proposal.

We dismiss the protest.

The RFP contemplated the award of a fixed-price, combined indefinite-quantity and requirements, contract for dairy operation and maintenance services, and provided estimated minimum and maximum quantities for the indefinite quantity items and estimated quantities for the "requirements" items. Offerors were required to provide fixed unit price offers for the estimated quantities and to submit cost and pricing data.¹ The RFP requested technical proposals that addressed the offeror's management capability, contract performance plan and company experience, and provided that award would be made to the low-priced, technically acceptable offeror. The RFP did not provide for consideration of cost factors or require a cost realism analysis in the technical evaluation.

Of the three proposals received in response to the RFP, DMD was the low-priced, technically offeror, and award was made to that firm on December 4, 1991. Contact, the incumbent contractor, protested on December 13.

Contact protests that the Army failed to perform a cost realism analysis of DMD's allegedly below-cost proposal. There is no requirement that a cost realism analysis be performed in every instance where an RFP requires cost and pricing data. See Research Mgmt. Corp., 69 Comp. Gen. 368 (1990), 90-1 CPD ¶ 352. Where, as here, the RFP does not provide for a cost realism analysis and adequate price competition has been obtained, the agency is not obligated to perform a cost analysis, as is contended by Contact.² Id.

Contact also contends that DMD's price is unreasonable because DMD has allegedly submitted a below-cost offer for this fixed-price contract. This allegation concerns DMD's ability to perform the contract at the offered price, which is a matter of responsibility. The agency has determined that DMD is responsible, and our Office will not review such an affirmative determination of responsibility, absent a showing of possible fraud or bad faith by government officials, or misapplication of definitive responsibility criteria, neither of which were alleged here.

¹The RFP did not indicate why the cost and pricing data was requested.

²To the extent, Contact is contending that the RFP should have provided for a cost realism evaluation, Contact's protest concerns an apparent solicitation impropriety that was untimely protested after the closing date for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).

Logistics Operations, Inc., B-240726.4, June 4, 1991, 91-1 CPD ¶ 526. The submission of a below-cost offer is not legally objectionable in itself. Id.

Contact also protests that the RFP failed to release sufficient information regarding existing labor costs to allow offerors to compete on an equal basis. This allegation concerns an apparent solicitation impropriety that Contact was required to protest prior to the closing date for receipt of proposals to be considered timely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). Contact's post-award protest of this matter will not be considered.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel